

REMARKS

Claims 1 - 29, 39, and 40 have been cancelled without prejudice, as these claims were withdrawn under a restriction requirement. Cancellation of these claims, which may be brought subsequently in a divisional application, places the current application in condition for allowance.

Claim Rejections Under 35 U.S.C. § 102:

Claims 30 - 38 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,927,178 to Kim et al.

35 U.S.C. § 102 (e) states: “A person shall be entitled to a patent unless ... (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.”

U.S. Patent 6,927,178 to Kim et al. issued on August 9, 2005 from an application which was filed on December 10, 2003, which was published on October 28, 2004.

Under 35 U.S.C. § 102(e)(1), the invention must be described in an application for patent, published under section 122(b), by another, where the application was “filed in the United States before the invention by the applicant for patent.” The present patent application was filed on November 28, 2003, prior to the filing date of the Kim et al. patent application, indicating that the date of invention for the presently claimed subject matter was prior to the filing date of the Kim et al. patent application. In addition, the publication date for the Kim et al. application was October 28, 2004, which was 11 months after the filing date of the current application, and certainly not prior to the invention described and claimed by the present applicants for patent.

Under 35 U.S.C. § 102(e)(2), the invention must be described in a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent. Again, since the filing date of the Kim et al. application was December 10, 2003, after the filing date of the present application on November 28, 2003, it is clear that the application for patent by another was not filed before the invention by the present applicants for patent.

Therefore, the Kim et al. reference cannot be used as a basis for a 35 U.S.C. § 102(e) rejection of the present application. The subject matter disclosed in the Kim et al. reference is not prior art to the present invention.

Applicants would also like to mention that the present application is assigned to the same assignee (Applied Materials, Inc.) as the Kim et al. reference. A review of the inventors indicates that there are a number of inventors of the present invention who were also inventors in the Kim et al. patent. The reason some of the subject matter described and claimed in the present invention is mentioned in the Kim et al. disclosure is that a portion of the Kim et al. inventors knew of the work which had been done by the present applicants at the time the Kim et al. patent application was drafted. Since the Kim et al. reference is not prior art to the presently claimed invention, the Kim et al. reference cannot render the presently claimed invention anticipated or obvious. In addition, the Examiner can see that the subject matter claimed in the Kim et al. patent is distinct from the subject matter claimed by applicants in the present application, and there is no double patenting involved.

The Examiner is respectfully requested to withdraw the rejection of Claims 30 - 38 under 35 U.S.C. § 102(e) as being anticipated by the Kim et al. reference.

Applicants contend that the claims as presently amended are patentable over the cited art. The Examiner is respectfully requested to enter the amendments requested herein and to pass the application to allowance.

If the Examiner would like to discuss any of the issues with respect to patentability of the claims, the Examiner is invited to contact applicants' attorney at the telephone number provided below.

Respectfully submitted,



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